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Before the
Federal Communications Commission
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of:

CLOSED CAPTIONING et al.

) CGB-CC-0369

Ministry of Communications of the
Archdiocese of Miami

) Docket No. 06-181

To: Secretary

Attn: Perlesta Hollingsworth, Esq., Disability Rights Office, Room 3-C438
Consumer & Governmental Affairs Bureau

RESPONSE AND SUPPLEMENT TO PETITION

The Ministry of Communications of the Archdiocese of Miami ("ADM") submits this **RESPONSE AND SUPPLEMENT** to its above-captioned Petition (filed almost two years ago), following the FCC staff's November 12, 2013 letter to its FCC counsel ("Letter"). ADM's Petition broadly seeks FCC relief from the FCC's closed captioning rules and policies for its liturgical Sunday Mass telecast, in Spanish, on WLTU-TV ("Sunday Mass").

The Letter's "Request for Supplemental Information" stated that, in order to determine whether the Sunday Mass "should be exempted" from FCC closed captioning rules and policies, ADM should submit "additional information" to establish that such an FCC mandate would be "economically burdensome." See Letter at 1. Of course, any proper legal analysis of ADM's Petition should NEVER REACH that question, given the threshold constitutional issue here.¹

¹ That dispositive issue aside, ADM also provides herewith an updated Sworn Statement. See Appendix A.

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While ADM's January 18, 2012 Petition cites several independent bases upon which the FCC should grant administrative relief for the Sunday Mass, ADM's principal argument has been and remains that *any* FCC mandate (on *any* posited basis) that ADM alter the visual presentation of its Sunday Mass telecast—such as imposing closed captioning on this sacred liturgical observance—would violate ADM's first amendment rights, as well as the free exercise rights of the one million Catholics in the Miami-Ft. Lauderdale television market. Id.

The Letter gratuitously purports to dismiss ADM's threshold constitutional issue.² It then pivots solely to request that ADM submit additional (and intrusive) financial information in order that the staff may "complete its consideration" of the only issue that the FCC staff argues is pending in this case; namely, "whether you [ADM] have made the showing required to warrant such an exemption," i.e., whether an FCC's mandate requiring closed captioning of the Sunday Mass would be "economically burdensome" to ADM. See Letter, at 1-2.

Simply put, while an FCC closed-captioning mandate unquestionably would be "economically burdensome" to ADM,³ the constitutional issue is unquestionably the threshold question in this case. Indeed, First Amendment implications are presented ipso facto whenever the federal government might attempt to dictate the visual presentation of any religious programming. Moreover, the constitutional implications are magnified when, as here, the FCC attempts to force the alteration of a formal liturgical observance, such as the Spanish-language telecast of the ADM's sacred, historic Sunday Mass. The Letter's cursory (and non-decisional) "dismissal" of this threshold issue reasonably requires supplemental attention.

² Because the Letter merely requests more information and is in no respect a "decision on the merits," the Letter's gratuitous (and erroneous) comments regarding the constitutional issue are puzzling at best.

³ In fact, such a mandate would be so "economically burdensome" as to force the ADM to cancel the Sunday Mass, which itself would be profoundly contrary to the public interest. See Appendix A hereto.

First, the Letter conspicuously fails even to present a fair representation of ADM's contentions as to the scope of the religious rights at issue in this case. As ADM has noted,⁴ the Catholic Church's Sunday Mass is, generically, one of the most historically sacred observances of Catholic liturgy. See Sworn Statement, attached as Appendix A to the 2012 Petition (at ¶¶ 7 & 10). How the ADM and, universally, how the Catholic Church chooses to visually present its liturgical Sunday Mass each week is manifestly an *internal judgment of the Church* – derivative of a long history of a liturgical observance that has been meticulously designed and maintained by the Catholic Church for millennia. Id. Any FCC attempt to mandate an alteration of ADM's telecast of its Sunday Mass patently conflicts with ADM's fundamental First Amendment rights to control and determine not only the substantive content but also the visual aspects of its historic liturgical practices, including the weekly telecast of the sacred liturgical observance that is the Sunday Mass. Id.

In short, ADM's objection to the FCC's attempt to force the closed captioning of its Sunday Mass is grounded in the ADM's *reasoned judgment* that imposing closed captioning on the Sunday Mass would be so visually disruptive as to violate Catholic traditions and liturgical practices that are fundamental to the Catholic religion itself. Id.⁵ Moreover, the ADM's internal judgment on this matter is effectively mandated by the 2011 guidelines of the U.S. Conference of Catholic Bishops, which prohibit any denigration of the solemnity of the liturgical Sunday Mass. Id. In sum, the FCC's attempt to substitute *its judgment* regarding the required visual presentation of ADM's Sunday Mass for *the ADM's judgment* violates ADM's religious rights to

⁴ See 2012 Petition, supra, at 5-6 and 9-10 and Appendix A thereto (paras. 3, 7 & 10).

⁵ Indeed, even former FCC Commissioner Robert Mc Dowell raised serious concerns last year that the FCC's mandating closed captioning in some circumstances might be harmful and that the "display standards" of closed captioning might even be "unworkable." See Report and Order, FCC 12-9, released January 13, 2012, at 111.

control the visual aspect of its Sunday Mass, contrary to the First Amendment to the U.S. Constitution.

Indeed, contrary to the Letter's erroneous analysis of a case cited in ADM's 2012 Petition, it is clear that the federal courts will protect religious rights such as those at issue here. First, ADM's citation, in its 2012 Petition, to the Supreme Court's decision in Hosanna-Tabor Evangelical Lutheran Church v. EEOC, 132 S. Ct. 694 (2012), was merely to note, *inter alia*, Chief Justice Roberts' salient observation that the federal government may not constitutionally interfere in the sensitive internal judgments of religious groups. *Id.* Indeed, ADM's threshold argument in this case is supported by the Chief Justice's observation in last year's Supreme Court decision; namely, that a federal agency may not constitutionally substitute its judgment for the sensitive internal judgment of a religious group. The Chief Justice's observation prominently supports ADM's argument here that the FCC may not legally mandate the closed captioning of ADM's liturgical Sunday Mass, contrary to ADM's good-faith, internal judgment that closed captioning would violate one of the Church's most sacred liturgical observances.

Numerous other federal court decisions sustain ADM's threshold contention that the FCC's imposition of a closed captioning mandate on ADM's Sunday Mass unconstitutionally would violate ADM's right to determine how its sacred, liturgical Sunday Mass should be visually presented. The Supreme Court long has recognized that some federal rules cannot lawfully be imposed on religious organizations. *See generally NLRB v Catholic Bishop*, 440 U.S. 490 (1979). In addition, the Supreme Court has made it clear that the Free Exercise Clause generally shields religious groups against certain governmental regulations. *See Church of Lukumi Babalu Awe, Inc. v. City of Hialeah*, 508 U.S. 520, 525 (1993).⁶ The Supreme Court also has repeatedly

⁶ Courts also have long protected the religious rights of many groups under the Religious Freedom Restoration Act. *See, e.g., Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

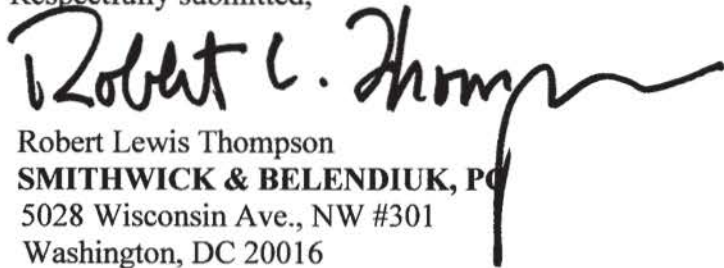
held that the rights of religious groups extend to “religiously motivated conduct” (such as the ADM’s Sunday Mass).⁷

In sum, the FCC may not constitutionally substitute its judgment -- that the ADM must provide closed captioning of its sacred liturgical Sunday Mass -- over objections based on ADM’s reasoned, internal judgment that government-forced closed captioning of the Spanish-language telecast of its Sunday Mass would be so visually disruptive as to violate the traditions and scriptural teachings of this weekly liturgical observance—a religious practice that is fundamental to the Catholic religion.

CONCLUSION

In view of the foregoing, the FCC should grant appropriate administrative relief to ADM with respect to any rule or policy that otherwise would mandate closed-captioning of ADM’s Sunday Mass telecast.⁸

Respectfully submitted,


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December 12, 2013

⁷ See *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harvard L. Rev. 1409, 1488-89.

⁸ Although ADM urges the FCC to grant its Petition on the basis of the threshold constitutional issue, it recognizes that the FCC might lawfully grant appropriate administrative relief to ADM, based on record evidence that an FCC closed-captioning mandate on the ADM’s Sunday Mass would result in the ADM’s forced cancellation of the Sunday Mass, contrary to the public interest.

APPENDIX A

Sworn Statement

This Statement is provided in support of the Petition, filed January 18, 2012, by the Ministry of Communications of the Archdiocese of Miami ("ADM").

I have reviewed my "Affidavit," dated January 18, 2012, and it remains true and complete. As detailed therein, the Sunday Mass is broadcast in Spanish each week on WLTV-TV.

The very idea of closed captioning (or even "signing") presents an irreconcilable, threshold problem for the ADM. The Sunday Mass, generically, is a fundamental and indispensable component of Catholic liturgy, established and maintained by the Church for millennia. The ADM's internal, good-faith judgment is that the visual presentation of the Sunday Mass on WLTV-TV cannot not be altered and distorted by closed captioning. Indeed, this reasoned judgment of the ADM, regarding the Sunday Mass on WLTV-TV, is effectively dictated by the 2011 guidelines of the United States Catholic Conference of Bishops. If the FCC were to mandate the closed captioning of the Sunday Mass, the ADM would have no choice but to cancel the Sunday Mass, which currently is available to one million Catholics in the Miami-Ft. Lauderdale television market. The federal government cannot constitutionally mandate such a result, by substituting its judgment for that of the ADM with respect to the visual presentation of the sacred Sunday Mass.

The foregoing threshold problem -- the federal government's unconstitutional attempt to mandate a distortion of the Sunday Mass -- renders all other issues effectively moot. It also remains true, however, that the crushing economic burden of any FCC-forced closed captioning of the Sunday Mass, itself, would force the ADM to cancel the Sunday Mass. Financial burdens are such that there remain no other options.

Finally, the forced shutdown of the ADM's Spanish-language broadcast of the Sunday Mass would be an incalculable loss to the public, as it would cancel access for a million Catholics in South Florida to this historically sacred liturgical observance. Such a result cannot legally be deemed to be in furtherance of "the public interest."

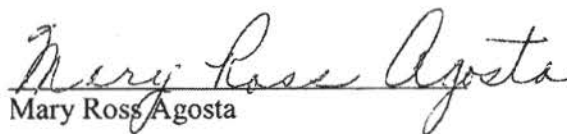
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Ministry of Communications

Certification

I, Mary Ross Agosta, a resident of the State of Florida, have been director of the Ministry of Communications of the Archdiocese of Miami since 1988. The foregoing Statement (Appendix A to the Response and Supplement) is submitted under penalty of perjury this 11th day of December, 2013.


Mary Ross Agosta

December 11, 2013